

September 2, 1999

California Energy Commission
Attn: Docket No. 98-A&B-1
Docket Unit
1516 Ninth Street, MS-4
Sacramento, CA 95814

Re: Comments for September 2, 1999 Workshop, Appliance Standards Rulemaking

Dear CEC:

The Air-Conditioning and Refrigeration Institute (ARI) appreciates the opportunity to submit comments on the Preliminary Draft to California's proposed changes to its Appliance Efficiency Regulations. ARI is a trade association representing the manufacturers of over 95% of U.S. produced air-conditioning and commercial refrigeration equipment (excluding refrigerators/freezers and room air-conditioners). ARI represents a domestic industry of over 200 companies that employ approximately 150,000 people in the U.S.

ARI supports the concept of updating CEC's regulations to be consistent with Federal Standards and references. However, we believe the Preliminary Draft goes far beyond what is necessary, and even legal, for the following reasons:

Preemption

The Energy Policy and Conservation Act ("EPCA"), as amended by National Appliance Energy Conservation Act ("NAECA") and by the Energy Policy Act ("EPACT") contains very strong preemption provisions. 42 U.S.C. §§ 6297, 6316. They are intended to provide for national uniformity and avoidance of a patchwork of state requirements. A number of provisions in the Preliminary Draft are preempted as they purport to apply to appliances covered pursuant to these federal statutory provisions.

In brief, any state requirement concerning energy efficiency or energy use of federally covered appliances is preempted unless it is in a building code for new construction that meets certain requirements. Also preempted is any state requirement for the disclosure of information with respect to any measure of energy consumption of any federally covered appliance if the state requirement (i) requires testing or the use of any measure of energy consumption or energy descriptor in any manner other than that provided under the federal testing requirements or (ii) requires disclosure of information with respect to the energy efficiency or energy use of any federally covered product other than information required under federal labeling rules.

Measured against these requirements, at least the following items in the Preliminary Draft are preempted as they relate to federally covered appliances:

Requirements concerning energy efficiency or energy use: The Preliminary Draft contains requirements concerning energy efficiency or energy use of

federally covered appliances (see, e.g., Sections 1604, 1607). They are preempted because such provisions can survive only if, at the very least, they are in a building code for new construction that meets certain requirements. The Preliminary Draft is not a building code for new construction.

Section 1603: Section 1603 requires the manufacturer to test samples of each "model" of appliances listed in the section. The applicable federal test procedures provides for testing of samples of "basic models" as defined in the federal regulations. 10 C.F.R. § 430.24. Therefore, Section 1603 imposes something not in the federal test procedure and is therefore preempted.

In addition, Section 1603 requires testing "at a laboratory that has been approved by the [CEC] Executive Director for the use of that test method." There is a series of requirements for CEC approval, including providing copies of the test reports to the CEC on request and allowing representatives of the CEC to witness tests. These requirements are preempted because they are not provided for under the federal test procedure.

Section 1605: Section 1605 provides that each manufacturer of an appliance must file with the CEC a statement containing certain information at least 60 days before the sale or offering for sale in California of any new or modified model is begun. This provision is preempted because, among other things, it blocks federally covered products.

Furthermore, the information required to be filed exceeds the information required under 42 U.S.C. § 6294(c)(2) and is therefore preempted. See *id.* §§ 6297(a)(2), 6316(b)(1).

Section 1606. Section 1606 provides for the marking of appliances. Subsection (a) relating to "All Appliances" is preempted as to all federally covered products because it imposes requirements beyond what is provided in the federal labeling rules, for example, the model number on the nameplate. In addition, Subsections (a) and (c) are preempted for federally covered commercial and industrial equipment because the only marking that can be required is that provided in a federal marking rule for such equipment. The statute provides that there shall be no labeling rule under certain conditions. 42 U.S.C. § 6315(h). ARI has taken the position that the conditions do not warrant a labeling rule with respect to ARI-related commercial and industrial equipment, and DOE has not yet adopted one.

Section 1608. This provision establishes a state enforcement regime. It is preempted as to federally-regulated products. Federal enforcement applies to such products.

Scope

The scope of this rulemaking should be limited to include only non-federally regulated products which are already covered by CEC's Efficiency Regulations. Specifically, all products listed in Table C-7 (unitary air-conditioners greater than 240,000 Btu/h capacity, condensing units, and water chilling packages) should be deleted from the scope, along with air source heat pumps greater than 240,000 Btu/h capacity from Table C-6.

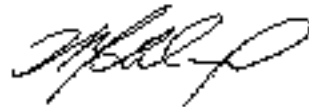
The Committee Order on the scope of the rulemaking, dated April 15, 1999 stated "The Committee does not intend to move forward with new efficiency standards at this time." The Order further stated, "Shortly after the conclusion of the present proceeding the Committee will convene a workshop to discuss priorities for new standards." Therefore, the above products should be deferred to the subsequent proceeding.

Filings and Directory Submittals

Despite the fact that ARI contends that federal preemption does not require its submission of certain directory data to CEC, ARI has a history of close cooperation with CEC. ARI is willing to continue to provide directory listings as outlined in CEC's order of May 1, 1996, but not under the conditions specified in Section 1605 of the Preliminary Draft.

ARI has recently revised its electronic databases, using a new platform called PRIMENET, which can be made available to CEC containing all the information needed. PRIMENET is a major step forward in ARI's directory services, providing up to the minute listings and sorting routines – all available to CEC and its constituents on the Internet. The capabilities of PRIMENET far surpass the old manner in which ARI used to provide data to CEC, making Section 1605 unnecessary for ARI programs. The established credibility and international acceptance of ARI's directories will only be further enhanced by PRIMENET, and we urge CEC to adapt its procedures to use it.

Sincerely,



W. Ted Leland,
Vice President
Government Affairs

Cc: Larry Wethje, ARI
John Hodges, ARI legal counsel